

## **Exhibit 3**

**Johnson, Dan**

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**From:** Johnson, Dan  
**Sent:** Thursday, April 18, 2019 5:59 PM  
**To:** 'MacDougall, Mark'; Mitchell, Stacey; Trout, Robert (External); Murphy, Jack  
**Cc:** Kelner, Robert; Anthony, Stephen; Walker, Robert; Moss, Brandon J.  
**Subject:** RE: United States v. Rafiekian -- Subpoenas and Protective Order  
**Attachments:** DRAFT Protective Order for Rule 17(c) Subpoena Material (CB).DOCX

Mark, et al.,

Please see attached revised version. There is a new paragraph 8 and two other small changes made for sake of consistency with other paragraphs. The new paragraph 8 would allow any dispute over use of PI at trial to be resolved later, when you will have a better idea whether you even want to use any PI at trial and, if so, what you want to use. Please let me know this evening whether we have an agreement.

Brandon, could you please forward to Ms. Verderame?

Thank you.

Regards,

Dan

**Daniel E. Johnson**

Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
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**From:** MacDougall, Mark <mmacdougall@AKINGUMP.COM>  
**Sent:** Thursday, April 18, 2019 5:16 PM  
**To:** Johnson, Dan <DEJohnson@cov.com>; Mitchell, Stacey <shmitchell@akingump.com>; Trout, Robert (External) <rtrout@troutcacheris.com>; Murphy, Jack <jmurphy@AKINGUMP.com>  
**Cc:** Kelner, Robert <rkelner@cov.com>; Anthony, Stephen <santhony@cov.com>; Walker, Robert <RLWalker@wileyrein.com>; Moss, Brandon J. <BMoss@wileyrein.com>  
**Subject:** Re: United States v. Rafiekian -- Subpoenas and Protective Order

Dan -

That is not how we read or intended that language, but I recognize the ambiguity - which you can attribute to our oversight in an initial draft.

We issued the subpoenas to Covington and Ms. Verderame to obtain evidence for use at trial. There is a very high prospect that one or more of your partners will be called as a witness at trial - including as a hostile/adverse witness by the defense. Under those circumstances, as an example, a process that allows Covington to litigate which documents can be used in the cross-examination of one of its own partners, would be self-defeating. We don't believe that is what Judge Trenga had in mind.

So if you have language that would allow you to protect the equities with which you are concerned - while allowing us to try our case, we are happy to look at it. We are tied up in a meeting but should be able to talk in the next hour or so.

Mark

Sent from my BlackBerry - the most secure mobile device

**From:** [DEJohnson@cov.com](mailto:DEJohnson@cov.com)

**Sent:** April 18, 2019 4:23 PM

**To:**

[mmacdougall@AKINGUMP.COM](mailto:mmacdougall@AKINGUMP.COM);

[shmitchell@akingump.com](mailto:shmitchell@akingump.com);

[rtrout@troutcacheris.com](mailto:rtrout@troutcacheris.com)

**Cc:** [rkelner@cov.com](mailto:rkelner@cov.com);

[santhony@cov.com](mailto:santhony@cov.com);

[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com);

[BMoss@wileyrein.com](mailto:BMoss@wileyrein.com)

**Subject:** RE: United States v.

Rafiekian -- Subpoenas and

Protective Order

Mark,

I believe our paragraphs 2 and 3 are consistent with what you had proposed initially. Your paragraph 3 said,

Except with the prior authorization of the Court, the defendant and his attorneys shall not disclose to anyone the contents of the documents provided by Covington and Verderame.

Even under your language, I don't see how you could use documents at trial without that permission. In any event, I don't think Judge Trenga contemplated that you could use the protected documents at trial without first going through some type of motion process that allows Covington and/or FIG to be heard.

I'm happy to discuss at 5:00 or later today, if convenient for your team, to see if we can reach a resolution.

Regards,

Dan

**Daniel E. Johnson**

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inadvertently  
transmitted  
to you and  
delete this e-  
mail from  
your system.  
Thank you  
for your  
cooperation.

**From:** MacDougall, Mark <[mmacdougall@AKINGUMP.COM](mailto:mmacdougall@AKINGUMP.COM)>  
**Sent:** Thursday, April 18, 2019 4:01 PM  
**To:** Johnson, Dan <[DEJohnson@cov.com](mailto:DEJohnson@cov.com)>; Mitchell, Stacey <[shmitchell@akingump.com](mailto:shmitchell@akingump.com)>;  
Trout, Robert (External) <[rtrout@troutcacheris.com](mailto:rtrout@troutcacheris.com)>  
**Cc:** Kelner, Robert <[rkelner@cov.com](mailto:rkelner@cov.com)>; Anthony, Stephen <[santhony@cov.com](mailto:santhony@cov.com)>; Walker,  
Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>; Moss, Brandon J. <[BMoss@wileyrein.com](mailto:BMoss@wileyrein.com)>  
**Subject:** RE: United States v. Rafiekian -- Subpoenas and Protective Order

Dan – Paragraphs 2 and 3 of your revised draft protective order would limit Mr. Rafiekian's ability to use documents that are subject to production at trial and we, of course, cannot agree to such a restriction. We could consider a provision that has documents to be produced by Covington filed under seal when part of a pre-trial motion, but that restriction would not limit references to such exhibits in any order or opinion subsequently issued by the Court. Please let us know if we can resolve this issue today – otherwise we will have to include it on our list of matters to raise at the status conference tomorrow.

Thanks.

Mark

**Mark J. MacDougall**

Direct: [+1 202.887.4510](tel:+1202.887.4510) | Internal: 24510

**From:** Johnson, Dan <[DEJohnson@cov.com](mailto:DEJohnson@cov.com)>  
**Sent:** Thursday, April 18, 2019 10:36 AM  
**To:** Mitchell, Stacey <[shmitchell@akingump.com](mailto:shmitchell@akingump.com)>; Trout, Robert (External) <[rtrout@troutcacheris.com](mailto:rtrout@troutcacheris.com)>; MacDougall, Mark <[mmacdougall@AKINGUMP.COM](mailto:mmacdougall@AKINGUMP.COM)>; MacDougall, Mark <[mmacdougall@AKINGUMP.COM](mailto:mmacdougall@AKINGUMP.COM)>  
**Cc:** Kelner, Robert <[rkelner@cov.com](mailto:rkelner@cov.com)>; Anthony, Stephen <[santhony@cov.com](mailto:santhony@cov.com)>; Walker, Robert <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>; Moss, Brandon J. <[BMoss@wileyrein.com](mailto:BMoss@wileyrein.com)>  
**Subject:** RE: United States v. Rafiekian -- Subpoenas and Protective Order

**\*\*EXTERNAL Email\*\***

Mark, Stacey, Bob,

Following up on our call, I've attached Covington's version of the draft Protective Order. Please let me know if/when you would like to discuss.

Thank you for agreeing to extend until May 3 Covington's time to complete its production, and for your statement that our folks need not work on this over the holiday weekend (as I indicated, we've had a large contingent working on this). I will provide to you by COB today the number of pages we expect to produce on or before Monday and the approximate number of pages we are still reviewing for responsiveness. We likely will produce documents electronically through a file-share site.

Regards,

Dan

**Daniel E. Johnson**

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inadvertently  
transmitted  
to you and  
delete this e-  
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your system.  
Thank you  
for your  
cooperation.

**From:** Johnson, Dan

**Sent:** Thursday, April 18, 2019 9:58 AM

**To:** 'Mitchell, Stacey' <[shmittell@akingump.com](mailto:shmittell@akingump.com)>; 'Trout, Robert (External)' <[rtrout@troutcacheris.com](mailto:rtrout@troutcacheris.com)>; 'MacDougall, Mark' <[mmacdougall@AKINGUMP.COM](mailto:mmacdougall@AKINGUMP.COM)>

**Cc:** Kelner, Robert <[rkelnr@cov.com](mailto:rkelnr@cov.com)>; Anthony, Stephen <[santhony@cov.com](mailto:santhony@cov.com)>; 'Walker, Robert' <[RLWalker@wileyrein.com](mailto:RLWalker@wileyrein.com)>; 'Moss, Brandon J.' <[BMoss@wileyrein.com](mailto:BMoss@wileyrein.com)>

**Subject:** RE: United States v. Rafiekian -- Subpoenas and Protective Order

Stacey, Bob,

Would you have time this morning to discuss your draft protective order and Covington's production? Please let me know your availability.

Regards,

Dan

**Daniel E. Johnson**

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**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

<b>UNITED STATES OF AMERICA</b>	:	
	:	
<b>v.</b>	:	<b>Criminal Case No. 1:18-CR-457 (AJT)</b>
	:	
<b>BIJAN RAFIEKIAN, et al.</b>	:	

**PROTECTIVE ORDER**

Covington & Burling LLP (“Covington”) and Kristein Verderame (together, the “Non-Parties”) and Defendant Bijan Rafiekian (“Defendant”) having stipulated and agreed to the entry of this Protective Order, it is hereby ORDERED that:

1. This Order shall apply to all information, documents, or things, including without limitation, electronically stored information, including writings, transcripts, drawings, graphs, photographs, sound records, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form, and any other information furnished, directly or indirectly, by or on behalf of the Non-Parties in response to the subpoenas issued to the Non-Parties at Defendant’s request in this proceeding (collectively, “Protected Information”).

2. Neither Defendant nor his attorneys shall disclose to anyone the Protected Information except to the Court in a sealed filing. Should Defendant move the Court for an order to disclose Protected Information, Defendant shall serve a copy of any such motion on the Non-Parties no later than upon filing such motion with the Court. Should the Court order the disclosure of any Protected Information, Defendant shall serve a copy of such order on the Non-Parties no less than ten (10) days prior to disclosing such information.



3. Except with the prior authorization of the Court, any filing that contains, references, quotes from, reflects, or attaches Protected Information shall be filed under seal pursuant to Local Criminal Rule 49. Defendant shall redact all Protected Information from any public filings.

4. The production of any Protected Information by the Non-Parties shall not constitute a waiver of any privilege or protection with respect to that Protected Information or its subject matter in this or any other proceeding.

5. The use of Protected Information in a sealed filing with this Court shall not constitute a waiver of any privilege or protection with respect to the Protected Information.

6. This Order shall be interpreted to provide the greatest protection allowed by Federal Rule of Evidence 502, or otherwise permitted by law. In accordance with Federal Rule of Evidence 502, if the Non-Parties through inadvertence produce or provide discovery that they believe is not responsive to the subpoenas or is subject to a claim of attorney-client privilege or work product immunity by any person or entity other than Flynn Intel Group Inc., upon discovering such inadvertence, the Non-Party shall give written notice to Defendant and request that the document or information be returned. Defendant and his attorneys shall immediately return such document or information and destroy any copies or summaries of, such information that contain, reference, quote from, reflect, or attach, any inadvertently produced documents or information.

7. At the conclusion of this proceeding, Defendant and his attorneys shall return or destroy all copies of Protected Information, and destroy any summaries, excerpts, or other work product or information that contain, reference, quote from, reflect, or attach Protected Information.

8. This Order shall apply to all pre-trial proceedings. If Defendant or his counsel wish to use or disclose Protected Information at trial, they may do so only under a separate order.

~~8.9.~~ This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

SO STIPULATED:

/s/  
Robert P. Trout  
Mark J. MacDougall  
Stacey H. Mitchell  
John C. Murphy  
  
Counsel for the Defendant

KRISTEN VERDERAME  
~~By Counsel~~

/s/  
~~Kristen Verderame~~ Brandon J. Moss  
~~Mark B. Sweet~~  
  
~~Counsel for Kristen Verderame~~

COVINGTON & BURLING LLP  
By Counsel

/s/  
Daniel E. Johnson  
  
Counsel for Covington & Burling LLP

SO ORDERED.

Dated:  
Alexandria, Virginia

The Honorable Anthony J. Trenga  
United States District Judge